

## **SECTION II: REMARKS**

### **A. SUMMARY OF AMENDMENTS**

Claims 13 and 25 have been amended herewith to clarify the nature of the searching or browsing (i.e., to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device) and that the searching or browsing is “is performed independently” (rather than “is independent”) of the periodic filtering of information about the content to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device. The wherein clauses of claims 13 and 25 are supported by the originally-filed specification, for example, at pages 2-4 and 8-9 thereof. Page 3-4 of the specification disclose that faster reaction times are realized by browsing filtered information stored in the content directory service as compared to searching all stored content. Page 3 refers to an embodiment in which filtering and storing steps are performed in predetermined time intervals without requiring information indicative of presence of network rendering devices. Pages 8-9 (e.g., in connection with Figure 3) disclose updating of the filtering and storing steps as needed upon detection of changes to the network or network rendering devices. Page 2-3 also refer filtering of information and storing said filtered information, and the stored information “can then be selected before trying to initiate a rendering process, and using this information it can be ensured that only possible rendering processes are selected, or that only content, which can be rendered, is made visible to a user trying to activate a rendering process<sup>1</sup>.” Page 4 discloses an embodiment in which previously-filtered information continues to be stored on a network after removal of a network rendering devices, thus minimizing network load associated with re-filtering content information. No new matter within the meaning of 35 U.S.C. 132(a) has been introduced by the foregoing amendments.

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<sup>1</sup> Application, page 3, first full paragraph.

**B. THE CLAIM REJECTIONS UNDER 35 U.S.C. 103 SHOULD BE  
WITHDRAWN**

The September 1, 2009 Office Action contained multiple rejections under 35 U.S.C. 103(a), namely:

- a rejection of claims 13, 17, 19, and 22-27 as being unpatentable for obviousness over U.S. Patent No. 6,049,821 to Theriault, et al. (“Theriault”) in view of U.S. Patent No. 6,065,055 to Hughes, et al. (“Hughes”);
- a rejection of claims 14 and 15 as being unpatentable for obviousness over Theriault and Hughes, further in view of U.S. Patent Application Publication No. 2003/0023671 to Abdulrahiman et al. (“Abdulrahiman”);
- a rejection of claim 16 as being unpatentable for obviousness over Theriault and Hughes, further in view of U.S. Patent Application Publication No. 2003/0126086 to Safadi (“Safadi”);
- a rejection of claims 18 and 20 as being unpatentable for obviousness over Theriault and Hughes, further in view of U.S. Patent Application Publication No. 2002/0143780 to Gorman (“Gorman”); and
- a rejection of claim 21 as being unpatentable for obviousness over Theriault and Hughes further in view of U.S. Patent Application Publication No. 2002/0078161 to Cheng (“Cheng”).

Such rejections raised in the September 1, 2009 Office Action are traversed for the reasons set out below.

**1. The Cited Art Fails to Disclose All Elements of Applicant’s Claims**

Claims 13-27 include two independent claims, namely, independent method claim 13 and independent device claim 25. These claims are reproduced below with particularly differentiating features highlighted in bold.

13. A method of filtering and storing information about content stored on at least one network device and accessible via a network, said content

being potentially useable by a plurality of network rendering devices adapted for rendering content, the method comprising:

a) periodically filtering information about the content to yield filtered information devoid of content that cannot be rendered by at least one network rendering device of the plurality of network rendering devices;

b) storing in a content directory the filtered information devoid of content that cannot be rendered by said at least one network rendering device; and

c) **searching or browsing the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device;**

**wherein said searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering of information about the content to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device.**

25. A device adapted for filtering and storing information about content accessible via a network, said content being potentially useable by a plurality of network rendering device adapted for rendering content, the device comprising:

a) at least one filtering element adapted to periodically filter information about the content to yield filtered information devoid of content that cannot be rendered by at least one network rendering device of the plurality of network rendering devices; and

b) a storage element containing a content directory including the filtered information devoid of content that cannot be rendered by said at least one network rendering device;

**wherein the content directory is searchable or browseable to enable review of said filtered information devoid of content that cannot be rendered by the at least one network rendering device, and searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering by the at least one filtering element to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device.**

The background section of the present application notes the following:

**“...browsing through the available information about content by (all) control points in the home network can put a significant load on all involved devices and on the network. A related problem is that Control Points often show all available content to a user, even content that cannot be used on any other device in the home. This is irritating to the user when he selects that content, only to find out that it is presented in the wrong format or wrong DRM system<sup>2</sup>.”**

The subject matter embodied in independent claims 13 and 25 addresses the foregoing limitations associated with prior art systems. Information about content may be periodically filtered to yield filtered information devoid of content that cannot be rendered by at least one network rendering device of the plurality of network rendering device, and such filtered information may be stored in a content directory. This prefiltered and stored information may be browsed or searched at any time thereafter to identify content renderable by a selected network rendering device. Some benefits are described as follows:

**“control points [or network rendering devices] have faster reaction times when they browse the content directory service - the content directory being the stored filtered information. Further, less load on the content directory service, the control point and the network is obtained when the control point browses the content directories. Further, the content presented to the user on the user screen of a control point only comprises content, which can be used<sup>3</sup>.”**

Such filtering and storing may be performed in predefined time intervals, or upon detection of changes to the network or network rendering devices<sup>4</sup>.

The filtering and storing steps in Applicant's claims are performed independently of the search/browse step, as demonstrated by the disclosure that filtering and storing

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<sup>2</sup> Application, page 2 (emphasis added).

<sup>3</sup> Application, page 3.

<sup>4</sup> Application, pages 2-3 and 8-9.

may be repeated according to a predetermined time interval or as needed upon detection of changes to the network or network rendering devices.

Theriault discloses use of a proxy that serves as an intermediary between a browser and an information source, with the proxy 300 serving to modify a query 160 initiated by the browser 100 (and to pass the modified query 360 to the information source 140), and with the proxy 300 serving to modify a response 170 provided by the information source (and pass the modified response 370 to the browser 100). Such regime is illustrated in Theriault Figure 2, and is further described by Theriault at col. 6, line 66 – col. 7, line 23, as reproduced below.

Information exchange between the browsers 100 and 101 and the information source 140 is facilitated by sending queries 160 and responses 170 through the enhanced proxy 300 via the communication channel. The **purpose of the enhanced proxy is to modify a query 160 and/or response 170 according to a set of filtering services** that the browser has established. Therefore, when a query 160 is received on the proxy attachment point 310, **the query is channeled through the enhanced proxy 300 to be modified according to the filtering services established with the proxy** for that browser. The modified query 360 is then forwarded by the enhanced proxy on to the information source 140 via the communication channel. This process is described in more detail below with reference to FIG. 3.

**On receiving the modified query 360, the information source 140 fetches the requested information from the attached information storage 150 device and sends the response 170 back to the enhanced proxy 300 via the communication channel. The response filter 304 of the enhanced proxy 300 modifies the response according to the set of filtering services** established for the browser, possibly storing all or part of the modified response 370 on the proxy information storage 330 device, and sends the modified response 370 back to the browser. This process is described in more detail below with reference to FIG. 4.

The relationship between Theriault's browser, proxy, and information storage elements is also described in Theriault's abstract, as reproduced below.

**A query (160) is sent from a browser (100, 101) to a proxy (300) directed to an information source (140) in a networked data communications system. In one aspect, the query is modified by the proxy to provide a modified query and the modified query is forwarded to the information source (120). A response (170) is received at the proxy from the information source and forwarded to the browser. In another aspect the response is modified by the proxy to provide a modified response (370) which is forwarded to the browser. The proxy (300) has a proxy configuration database (340) including a file (341) of services identifying a method of filtering for a specified browser (100) and filters (302, 304) for filtering responsive to the file of services, respectively, queries from and responses to the specified browser. The method of filtering may vary or be modified, for example, according to attributes of the URL within the query, proxy attachment point (310) for the browser, response content, or changing browser requirements, as user, device, or network service needs change.**

Although Theriault does disclose filtering by the proxy (e.g., to modify a query to the information source or response from the information source), such filtering is performed only upon initiation by the browser of a query. Theriault's filtering is tied to and dependent upon performance by the browser of a query. Stated differently, **Theriault's filtering step is not performed independently of Theriault's searching or browsing step.**

In the September 1, 2009 Office Action, the examiner pointed to "Column 3, lines 35-42" and "Column 4, lines 50-55" of Theriault as allegedly disclosing filtering and querying that are independent from one another<sup>5</sup>. Excerpts from Theriault including the foregoing passages are reproduced below for ease of reference.

"FIG. 1 illustrates components of a typical networked data communications system. A browser 100 is connected to an information source 140 via a browser link 110, a network 120 and an information link 130. Together the browser link, network and information link form the communication channel. A local network 230, a local information source

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<sup>5</sup> September 1, 2009 Office Action, page 3 and page 6.

240, a proxy 200, a proxy attachment point 210, and a cache 220 are shown.

The browser 100 is connected to the local network 230 via the browser link 110 and exchanges information with attached local information source 240 via this link. The local information source 240 retrieves the information from the attached local information storage device 250 and sends it back to the browser via the browser link 110. **Information exchanges between the browser and the local information source do not pass through the proxy.**

Information exchange is effected by sending requests or queries and responses between the browser and the information source via the communication channel. For example in FIG. 1, a browser sends a query 160 over the communication channel for information which is located at the information source 140. The information source 140 retrieves the information from the attached information storage 150 and sends the response 170 (i.e., the retrieved information) back to the browser via the communication channel.

The communication channel from the browser 100 to the information source 140 is established by passing through local network 230 to the proxy 200. **The browser connects to the proxy via an attachment point 210 (e.g., a port on the host computer). Queries 160 from and responses 170 to the browser are via the attachment point.** A cache 220, which may be used to store copies of recently received information responses from the information source, is attached to the proxy.

Access to the Internet is often provided by a service provider which may charge the user a fee based on the amount (e.g., kilobytes) of data transferred. When a user clicks on an HTML link the physical size of the information requested is not provided in advance to the user. As a result, users may unwittingly request and receive very large quantities of data (e.g. image files) in which they may have only a passing interest, or which may contain material they would like to filter out (e.g. pornography), and for which they may be charged. **It would be desirable if, at the user's request, a proxy could reduce in some fashion the amount of the information before it is delivered to the user's browser.** It would also be desirable if the proxy could provide to the browser an advance indication of the characteristics (e.g., size, content, etc.) of the information before it is transferred.

**Very little information about the capabilities of the browser is available to the proxy.** For instance, a user may request an HTML

document that contains tables or forms, but the browser may not be capable of displaying such data. In this a case the user would have to pay for data which would be unrecognizable by the browser and would be useless to the user. It would be desirable if the proxy could determine in advance the capabilities of the browser.

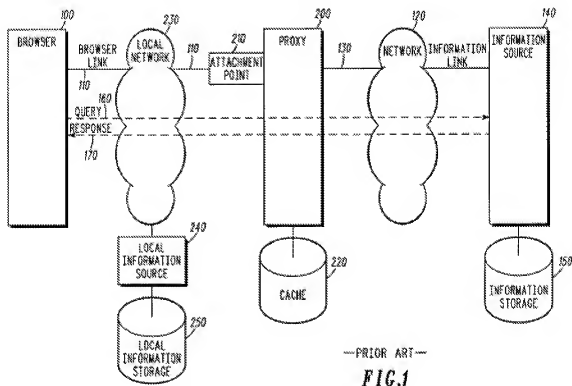
**The user has no means of requesting and selecting different services such as filtering from the proxy.** For instance, a browser may contain the ability to compress and un-compress information and the user may want to use that capability when transferring HTML data. In another instance, the proxy administrator may want to provide a service to the users of the proxy which prohibits the access of minors to specific servers. At present there is no means for the user to request such special or enhanced services from the proxy.”

(Col. 3, line 26 – col. 4, line 26.)

In accordance with a second aspect of the invention, means are provided for the browser to establish and select the filtering services to be used by the proxy when processing queries and responses on behalf of that browser. This may be accomplished in several ways which may be used independently or in combination with each other.

(Col. 4, lines 50-55.)

For ease of reference, Figure 1 of Theriault is reproduced below.



A review of Theriault col. 3, line 26 to col. 4, line 26 thus reveals that in a typical networked data communications system, information exchanges between a browser and a local information source (i.e., a local data device 250 connected to a local network 230 in FIG. 1) do not go through a proxy 200<sup>6</sup>, but that information exchanges with a non-local information source 140 do go through a proxy 200<sup>7</sup>. For communications with a non-local communication source that do go through the proxy in a conventional

<sup>6</sup> Theriault, col. 3, lines 34-42.

<sup>7</sup> Theriault, col. 3, lines 43-52 and Figure 1.

communication system, very little information about the capabilities of the browser and available to the proxy<sup>8</sup>, and the user has no means of requesting and selecting different services such as filtering from the proxy<sup>9</sup>.

The examiner's conclusion that "the information exchanged does not pass through the proxy which is independent"<sup>10</sup>, **only applies to information contained in Theriault's local information storage device 250**. See Theriault Figure 1 above.

In the September 1, 2009 Office Action, the examiner points to "column 5, lines 6-9 and lines 13-17" of Theriault as disclosing "filtering information about the content." Such passages of Theriault (reproduced below) disclose filtering performed exclusively on or with the proxy.

According to a fourth embodiment, the proxy has associated with it an information source which contains forms for selecting filtering services. **The user selects the desired filtering services** by fetching a form and completing and **returning it to the proxy information source** via the browser.

According to a further aspect of the invention, **methods are provided for the proxy to filter the requested and/or retrieved information**. Two classes of filtering services are employed by the proxy: filtering of the query received from the browser prior to forwarding it to the information source; and filtering of the response received from the information source before forwarding it to the browser.

(Theriault, col. 5, lines 6-17.)

In rejecting Applicant's claims 13 and 25, the examiner alleged that Theriault alone discloses the feature "wherein said searching or browsing of the content directory is independent of said filtering of information about the content to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device," and the examiner pointed to the following as supporting such allegation:

"Column 3, lines 35-42, Column 4; lines 50-55. Here the information exchanged does not pass through the proxy which is independent. Per Column 5, lines 6-9 and lines 13-17, the query and response cannot be

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<sup>8</sup> Theriault, col. 4, lines 10-11.

<sup>9</sup> Theriault, col. 4, lines 17-18

<sup>10</sup> September 1, 2009 Office Action, page 3 and page 6.

rendered to the network device – Browser, because the user selects the filtering of services which is also independent from each other.”

(September 1, 2009 Office Action, pages 5-6 and 11.)

Column 3, lines 35-42 and lines 50-55 of Theriault relate to a typical networked data system and local communications not utilizing a proxy. No filtering of such local communications is disclosed by Theriault. Disclosure by Theriault of information exchange that does not pass through the proxy relates solely to local communications, to which no filtering is applied. Conversely, column 5, lines 6-9 and lines 13-17 of Theriault relate solely to filtering as performed exclusively on or with a proxy.

Applicant’s claim 13 has been amended herewith to recite that “searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering of information about the content to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device.” Each of steps (a), (b), and (c) of Applicant’s claim 13 is still affirmatively required. Independent performance of step (c) “searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device” and step (a) “periodically filtering information about the content to yield filtered information devoid of content that cannot be rendered by at least one network rendering device of the plurality of network rendering devices” means that steps (c) and (a) should not be linked to or dependent upon one another.

Applicant’s claim 25 has been similarly amended to require that “searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering by the at least one filtering element to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device.”

It has been previously established herein that Theriault discloses that filtering is performed only upon initiation by the browser of a query. See Theriault, Abstract and col. 6, line 66 - col. 7, line 23. Theriault's filtering is tied to and dependent upon performance by the browser of a query. In other words, **Theriault's filtering step is not performed independently of Theriault's searching or browsing step.**

The examiner's citation of passages of Theriault indicating that filters may be modified by a user do not render the performance of Theriault's filtering step to be independent of Theriault's searching or browsing step. No matter which filtering criteria are used, Theriault's filters are "for filtering responsive to ... queries from and responses to the specified browser." (Theriault, Abstract, lines 10-14.) See also Theriault, col. 6, lines 1-3, stating that "Query filter 302 filters queries received from the browsers 100 and 101. Response filter 304 filters responses from the information storage 140 to the browsers 100 and 101."

Theriault therefore fails to disclose "wherein said searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering of information about the content to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device" as required by Applicant's independent claim 13. Theriault similarly fails to disclose "searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering by the at least one filtering element to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device" as required by Applicant's independent claim 25.

None of the other references remedy the foregoing deficiency of Theriault in disclosing all elements of Applicant's independent claims 13 and 25.

Hughes discloses software for inappropriate site management, wherein undesirable content from the World Wide Web is filtered through a primary filter list and further aided by a Uniform Resource Locator keyword search, and access to inappropriate sites may be blocked. Hughes has been cited by the examiner as teaching

incrementing filter hits during a scan interval, as well as filtering and/or preventing access to blocked material<sup>11</sup>. Hughes fails to disclose “wherein said searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering of information about the content to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device” as required by Applicant’s independent claim 13, and fails to disclose “searching or browsing of the content directory to review said filtered information devoid of content that cannot be rendered by the at least one network rendering device is performed independently of said periodic filtering by the at least one filtering element to yield filtered information devoid of content that cannot be rendered by the at least one network rendering device” as required by Applicant’s independent claim 25.

Abdulrahiman has been cited by the examiner as teaching wireless transmission of contents among portable devices, content having a transport protocol, and about content not compatible with network rendering devices<sup>12</sup>. Such reference fails to remedy the above-identified deficiencies in the other references in disclosing all elements of Applicant’s independent claims 13 or 25.

Safadi has been cited by the examiner as teaching copy protection of contents and Digital Rights Management (DRM) over communication networks and devices<sup>13</sup>. Such reference fails to remedy the above-identified deficiencies in the other references in disclosing all elements of Applicant’s independent claims 13 or 25.

Gorman has been cited by the examiner as teaching a system and method for filtering and sorting data<sup>14</sup>. Such reference fails to remedy the above-identified deficiencies in the other references in disclosing all elements of Applicant’s independent claims 13 or 25.

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<sup>11</sup> September 1, 2009 Office Action, page 6.

<sup>12</sup> September 1, 2009 Office Action, pages 13-14.

<sup>13</sup> September 1, 2009 Office Action, page 15.

<sup>14</sup> September 1, 2009 Office Action, page 16.

Cheng has been cited by the examiner as teaching about network communications over server and devices in a UPnP network<sup>15</sup>.

At page 6 and page 9 of the September 1, 2009 Office Action, the examiner further conceded that Theriault does not teach “periodic filtering,” as required by Applicant’s independent claims 13 and 25. The examiner pointed to Hughes as remedying such deficiency by disclosing a scan interval of 5 minutes, and alleging that “it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Theriault and Hughes by modifying the teachings of Theriault in order to secure the network by periodically filtering and fully block (sic, *blocking*) the unapproved sites from the users<sup>16</sup>.”

The lack of articulated reasoning or motivation supporting the hypothetical combination of Hughes and Theriault is discussed, *infra*. Even if such references were properly combinable (which they are not), however, the combination proposed by the examiner fails to embody all elements of Applicant’s claims. The examiner proposes to combine Hughes and Theriault “in order to secure the network by periodically filtering and fully block (sic, *blocking*) the unapproved sites from the users.” Nothing in Applicant’s claims embodies any filtering to block access to unapproved sites. Instead, Applicant’s claims are directed to periodic filtering of information about the content to yield filtered information devoid of content that cannot be rendered by at least one network rendering device of the plurality of network rendering devices. Applicant’s claims are not directed to blocking access to unapproved sites. Proposed modification of Theriault’s disclosure to periodically filter content to block unapproved sites as taught by Hughes would not embody the subject matter of Applicant’s claims. Accordingly, the proposed combination of Hughes and Theriault, even if supportable, would not support rejection of Applicant’s claims 13 or 25 under 35 U.S.C. 103.

Since the cited art fails to disclose multiple features of Applicant’s independent claims 13 and 25, such claims are patentably distinguished over the cited art. Since dependent claims inherently include all of the features of the claims on which they

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<sup>15</sup> September 1, 2009 Office Action, page 18.

<sup>16</sup> September 1, 2009 Office Action, pages 6 and 9.

depend (pursuant to 35 U.S.C. 112, fourth paragraph), the claims depending (whether directly or indirectly) from claims 13 or 25, dependent claims 14-24 and 26-27 are patentably distinguished over the cited art for at least the same reasons as articulated in connection with claims 13 and 25. Accordingly, withdrawal of all rejections under 35 U.S.C. 103 is warranted, and is respectfully requested.

**B. The Examiner Has Failed to Provide Articulated Reasoning With Rational Underpinning to Support the Conclusion of Obviousness**

In *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct 1727, 167 L.Ed.2d 705, 82 USPQ2d 1385, 1396 (2007), the Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and that it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed:

"Often, it will be necessary ... to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis **should be made explicit**." *KSR*, slip op. at 14 (emphasis added).

The Supreme Court further stated in *KSR* that "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness<sup>17</sup>."

Following *KSR*, the Federal Circuit held that although "rigid" application of the "teaching, suggestion, or motivation" ("TSM") test for obviousness is improper, **application of a flexible TSM test remains the primary guarantee against improper "hindsight" analysis**, because a flexibly applied TSM test ensures that the obviousness analysis proceeds on the basis of evidence in existence before time the application was filed, as required by 35 U.S.C. §103. *Ortho-McNeil Pharm. Inc. v. Mylan Labs., Inc.*, 520 F3d 1358, 86 USPQ2d 1196, 1201-02 (Fed. Cir. 2008)

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<sup>17</sup> See *KSR*, 82 USPQ2d at 1396 (emphasis added).

The April 13, 2009 Office Action fails to identify an apparent reason to combine the references, other than to merely include the examiner's conclusions that:

- “[i]t would have been obvious to have combined the teachings of Theriault and Hughes by modifying the teaching of Theriault in order to secure the network by periodically filtering and fully block the unapproved sites from the users<sup>18</sup>,”
- “[it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Theriault, Hughes, and Abdulrahiman by modifying the teachings of Theriault and Hughes in order to prevent certain data information from being transmitted to the destination by following certain supported data formats<sup>19</sup>,”
- “[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Safadi with Theriault, and Hughes and modify the teachings of Theriault and Hughes in order to interface with the multiple content providers and provide copy protection of content<sup>20</sup>,” and
- [i]t would have been obvious to a person of ordinary skill in the art to have combined the teachings of Gorman with Theriault and Hughes and modify the teachings of Theriault and Hughes in order to manage the data and filter multiple columns of data grids to that it satisfies the selected filter criteria<sup>21</sup>.”

In each case, the examiner's reasoning supporting the combination of references speaks to an end result and not a reason to combine. Such combinations of references are therefore premised on hindsight, which is improper<sup>22</sup>. The examiner's conclusions of obviousness lack articulated reasoning with rational underpinning, which have been

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<sup>18</sup> September 1, 2009 Office Action, pages 6, 7, 9, 12.

<sup>19</sup> September 1, 2009 Office Action, pages 13-14.

<sup>20</sup> September 1, 2009 Office Action, pages 14-15 and 16

<sup>21</sup> September 1, 2009 Office Action, pages 16 and 17.

<sup>22</sup> See *KSR*, 82 USPQ2d at 1396.

deemed insufficient for supporting an obviousness rejection<sup>23</sup>. Applying a flexible TSM test (as validated by the Supreme Court in *KSR* and subsequently validated by the Federal Circuit in *Ortho-McNeil, supra*), the examiner has failed to point to any teaching, suggestion, or motivation for combining the cited references, other than hindsight following review of Applicant's disclosure.

The foregoing arguments provide an independent basis (other than the failure of the art to disclose all elements of Applicant's new claims) for differentiating the claims over the cited art.

### **CONCLUSION**

In light of the foregoing, Applicants respectfully submit that all of the now-pending claims are in condition for allowance. Examination of all pending claims and issuance of a notice of allowance are earnestly solicited. Should any issues remain that may be amenable to telephonic resolution, the examiner is invited to telephone the undersigned attorneys to resolve such issues as expeditiously as possible.

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

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<sup>23</sup> See *KSR, supra*.

Respectfully submitted,

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